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PART - VI

Acts of Parliament and Ordinances promulgated by the President

LEGISLATIVE AND PARLIAMENTARY AFFAIRS DEPARTMENT

Sachivalaya, Gandhinagar, 17th June, 2023

No. RPB/1/Ord./2023/E:- The following Ordinance promulgated by the President and published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 19th May, 2023 is republished for general information:-

GOVERNMENT OF INDIA

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 19th May, 2023/Vaisakha 29, 1945 (Saka)

THE GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) ORDINANCE, 2023

No. 1 OF 2023

Promulgated by the President in the Seventy-fourth Year of the Republic of India.

An Ordinance further to amend the Government of National Capital Territory of Delhi Act, 1991.

WHEREAS Delhi being the Capital of India had been administered by the President of India directly. A *sui generis* status was, however, conferred upon Delhi whereby it was retained as Union territory but with legislature.

AND WHEREAS, Article 239AA came to be introduced into the Constitution of India providing for various functional-administrative networked issues balancing the legitimate participation of the Union Government while conferring democratic existence of a legislature and a Council of Ministers having curtailed powers.

AND WHEREAS, keeping in mind various reports of various Commissions and since Delhi is the capital city of the nation, the Constitution retained certain exclusive and plenary jurisdiction in the Parliament while incorporating Article 239 AA in general and Article 239AA[3][b] read with Article 239AA[7] in particular.

AND WHEREAS, several important National and international institutions and authorities like the President, the Parliament, the Supreme Court, etc. and various constitutional functionaries, etc., as well as all foreign diplomatic missions, international agencies, etc., are located in Delhi. It is also a place to which high dignitaries from other nations pay official visits frequently and it is in the national interest that the highest possible standards should be maintained in the administration and governance of the national capital.

AND WHEREAS, any decision taken or any event in the capital of the nation not only affects the residents of the national capital but also the rest of the country and at the same time has the potential of putting the national reputation, image, credibility and prestige at stake in the international global spectrum.

AND WHEREAS, the national capital belongs to the entire nation and the entire nation is vitally interested in the governance of the national capital. It is in the larger national interest that the people of entire country have some role in the administration of the national capital through the democratically elected Central Government.

AND WHEREAS, Delhi as the national capital has a unique status and certain distinguishing features. There is a need to promote the national interests without compromising on the democratic aspirations of the residents of Delhi.

AND WHEREAS, Article 1 of the Constitution declares that India, that is Bharat, shall be a Union of States and Union territories specified in the First Schedule;

AND, WHEREAS, clause (1) of article 239 empowers the President to administer every Union territory, to such extent as he thinks fit, acting through an administrator appointed by him with such designation as he may specify.

AND, WHEREAS, clause (1) of article 239AA of the Constitution, *inter alia*, mandates that the administrator of the Union territory of Delhi, shall be designated as the Lieutenant Governor of the National Capital Territory of Delhi.

AND WHEREAS, in absence of any Parliamentary legislation dealing with the subject of services as contained in Entry 41 of List II of the Seventh Schedule in the National Capital Territory of Delhi (hereinafter referred to as NCTD) either under Article 239AA[3][b] or under Article 239AA[7] of the Constitution of India, the Hon'ble Supreme Court was required to consider a reference concerning the subject of services in NCTD.

AND WHEREAS, in absence of any specific Parliamentary legislation dealing with the subject of services as contained in Entry 41 of List II of the Seventh Schedule specifically and in detail, the Hon'ble Supreme Court was pleased to pass a judgment dated 11.05.2023 in C.A. No. 2357/2017 in the matter of Govt. of NCT of Delhi Versus Union of India.

AND WHEREAS, in view of its special status as a national capital, a scheme of administration has to be formulated by Parliamentary law, to balance both local and national democratic interests which are at stake, which would reflect the aspirations of the people through joint and collective responsibility of both the Government of India and the Government of National Capital Territory of Delhi (hereinafter referred to as GNCTD).

AND WHEREAS, with a view to give effect to the intent and purpose behind the provisions of Article 239AA, a permanent authority headed by the democratically elected Chief Minister of Delhi along with Chief Secretary, GNCTD the head of the administration representing the will of the officers of GNCTD and the Principal Secretary Home, GNCTD is being introduced to make recommendations to the Lieutenant Governor regarding matters concerning transfer posting, vigilance and other incidental matters. This would statutorily balance the interest of the nation with the interest of Union Territory of Delhi in administration of the capital by giving purposeful meaning to the manifestation of democratic will of people reposed both in the Central Government as well as the GNCTD.

AND WHEREAS with a view to give effect to the very intent and purpose behind the provisions of Article 239AA and retaining the active, meaningful and effective participation of the President of India in national interest, which is also a democratic will of the nation in the matter of governance of its capital in the question of posting, transfer and other allied matters relating to the officers/employees employed in the functioning of the GNCTD and while providing for the democratic governance of the Council of Ministers of the GNCTD, provisions are required to be made.

AND WHEREAS for the purpose giving effect to Article 239(I) read with Article 239AA and in exercise of powers of Article 239(I), Article 239AA[3][b] and Article 239AA[7] of the Constitution of India, which includes the power to supplementing the provisions under Article 239AA including the power to make suitable amendments thereof, an Ordinance namely the Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023 is proposed to provide for a comprehensive scheme of administration of services deployed in the functioning of NCTD and other allied issues thereby balancing the local and domestic interests of the people staying in the NCTD with the democratic will of the entire nation reflected through the President of India.

AND, WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action.

NOW, THEREFORE, in exercise of the powers conferred by clause (I) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (I) This Ordinance may be called the Government of National Capital Territory of Delhi (Amendment) Ordinance, 2023.

Short title
and
commencement.

(2) It shall come into force at once.

1 of 1992.

2. In the Government of National Capital Territory of Delhi Act, 1991 (hereinafter referred to as the principal Act), in section 2, after clause (e), the following clauses shall be inserted, namely:—

Amendment
of section 2.

(ea) "Lieutenant Governor" means the administrator appointed under article 239 of the Constitution for the National Capital Territory of Delhi and designated as Lieutenant Governor by the President;

(eb) "Minister" means a member of the Council of Ministers referred to in clause (4) of article 239AA of the Constitution, by whatever name called and includes a Deputy Minister;'

3. After section 3, the following section shall be inserted, namely:—

Insertion of
new section 3A.

"3A. Notwithstanding anything contained in any judgement, order or decree of any Court, the Legislative Assembly shall have the power to make laws as per Article 239AA except with respect to any matter enumerated in Entry 41 of List II of the Seventh Schedule of the Constitution of India or any matter connected therewith or incidental thereto."

Additional
provisions
with regard to
Legislative
Assembly.

4. In section 41 of the principal Act,—

Amendment
of section 41.

(A) in the marginal heading for the words "act in his discretion", the words "act in his sole discretion" shall be substituted;

(B) in sub-section (I),—

(a) in the opening paragraph, for the words "act in his discretion", the words "act in his sole discretion" shall be substituted;

(b) in clause (ii), the word "; or" shall be inserted at the end;

(c) after clause (ii), the following clause shall be inserted, namely:—

"(iii) in discharge of his functions under Part IV-A of this Act."

(C) in sub-section (2), for the words "not a matter as respects", the words "not a matter in respect of" shall be substituted;

Insertion of
new Part IV-A.

5. After Part IV, the following Part shall be inserted, namely:—

'PART IV-A

PROVISIONS RELATING TO THE MAINTENANCE OF THE DEMOCRATIC AND ADMINISTRATIVE BALANCE IN THE GOVERNANCE OF NATIONAL CAPITAL TERRITORY OF DELHI

Definitions.

45A. In this part, unless the context otherwise requires—

(a) "All India Services" means any service created under the All India Services Act, 1951, except the Indian Police Service;

61 of 1951.

(b) "Authority" means the National Capital Civil Service Authority constituted under sub-section (1) of section 45E;

(c) "Chairperson" means the Chairperson of the Authority appointed under sub-section (2) of section 45D;

(d) "Chief Secretary" means the Chief Secretary of the Government of National Capital Territory of Delhi appointed by the Central Government;

(e) "Council" means the Council of Ministers referred to in clause (4) of article 239AA of the Constitution;

(f) "DANICS" means the Delhi, Andaman and Nicobar, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli (Civil) Services;

(g) "Delhi Subordinate Services Selection Board" means the Delhi Subordinate Services Selection Board constituted by the Government of National Capital Territory of Delhi through its Resolution No. F-3(7)/93-S. III, dated 4th October, 1996 read with Resolution F. 3(24)/DSSSB/2008-S.III/1764, dated 12th May, 2008;

(h) "Department" means a Department or office specified in the Schedule to the Business of Delhi (Allocation) Rules, 1993;

(i) "Group 'A' officers" means the officers serving in the affairs of Government of National Capital Territory of Delhi—

(a) belonging to All India Services, except the officers of the Indian Police Service;

(b) who are classified as Group 'A' officers, under rule 4 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965,

but shall not include the officers who are serving in connection with any subject matter, whether fully or in part connected with Entries 1, 2 and 18 of List II of the Seventh Schedule to the Constitution, and Entries 64, 65 and 66 of List II of the Seventh Schedule to the Constitution, insofar as they relate to the Entries 1, 2 and 18, or any other subject matter which is connected therewith or incidental thereto;

(j) "Group 'B' officials" means the Group 'B' officials, as classified under rule 4 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, but shall not include the officials who are serving in connection with any subject matter, whether fully or in part connected with Entries 1, 2 and 18 of List II--State List of the Seventh Schedule to the Constitution, and Entries 64, 65 and 66 of List II--State List of the Seventh Schedule to the Constitution in so far as they relate to the Entries 1, 2 and 18, or any other subject matter which is connected therewith or incidental thereto;

(k) "Group 'C' officials" means Group 'C' officials as such classified under rule 4 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, but shall not include the officials who are serving in connection with any

subject matter, whether fully or in part connected with Entries 1, 2 and 18 of List II--State List of the Seventh Schedule to the Constitution, and Entries 64, 65 and 66 of List II--State List of the Seventh Schedule to the Constitution insofar as they relate to the Entries 1, 2 and 18, or any other subject matter which is connected therewith or incidental thereto;

(l) "National Capital Territory of Delhi" means the Union Territory of Delhi as defined in clause (l) of article 239AA of the Constitution;

(m) "Member" means a member of the Authority and includes the Chairperson;

(n) "Principal Home Secretary" means the Principal Home Secretary of the Government of National Capital Territory of Delhi appointed by the Central Government;

(o) "Secretary" means a Secretary of the Department to the Government of National Capital Territory of Delhi.

45B. (l) The following shall be the Public Service Commissions for National Capital Territory of Delhi, namely:—

Public Service Commissions for National Capital Territory of Delhi.

(i) the Union Public Service Commission for appointment to the posts in Group 'A' and Group 'B' gazetted posts; and

(ii) The Delhi Subordinate Services Selection Board for appointment to the Group 'B' non-gazetted and Group 'C' non-gazetted posts.

45C. The Central Government may make rules to provide for any one or more of the following matters, in connection with the affairs of the Government of National Capital Territory of Delhi under this Part, namely:—

Power of Central Government to make rules under this Part.

(a) the tenure of office, salaries and allowances, provident funds, pensions, gratuities, leave of absence and other conditions of service of officers and other employees appointed or posted;

(b) the powers, duties and functions of officers and other employees appointed or posted;

(c) the qualifications of candidates for appointment to the posts and the manner of selection for the appointments;

(d) transfer or posting of the officers and other employees posted;

(e) the procedure to be followed in imposing any penalty, suspension pending departmental inquiries before the imposition of such penalty and the authority by whom such suspension or penalty may be ordered; and the officer or authority to whom an appeal or revision shall lie;

(f) any other matter which is incidental to or necessary for the purpose of regulating the appointment and conditions of service of persons appointed to services and posts; and

(g) any other matter for which, in the opinion of the Central Government, provisions to be made by rules.

45D. Notwithstanding anything contained in any other law for the time being in force, any authority, board, commission or any statutory body, by whatever name it may be called, or any office bearer or member thereof, constituted or appointed by or under any law for the time being in force, in and for the National Capital Territory of Delhi, shall be constituted or appointed or nominated by the President.

Constitution of authorities, boards, commissions or statutory bodies.

45E. (l) There shall be an Authority to be known as the National Capital Civil Service Authority to exercise the powers conferred on, and discharge the functions assigned to it under this Part.

Constitution of National Capital Civil Service Authority.

(2) The Authority, referred to in sub-section (1), shall consist of the following Members, namely:—

(a) the Chief Minister of Government of National Capital Territory of Delhi, who shall be the Chairperson of the Authority, *ex officio*;

(b) the Chief Secretary of Government of National Capital Territory of Delhi, Member, *ex officio*.

(c) the Principal Home Secretary, Government of National Capital Territory of Delhi, who shall be the Member Secretary to the Authority, *ex officio*.

(3) All matters required to be decided by the Authority shall be decided by majority of votes of the members present and voting.

(4) All recommendations of the Authority shall be authenticated by the Member Secretary.

(5) The head office of the Authority shall be at Delhi.

Meetings of
National
Capital Civil
Service
Authority.

45F. (1) The National Capital Civil Service Authority shall meet at such time and place as the Member Secretary may decide with approval of the Chairperson of the Authority, as and when so required.

(2) The Chairperson of the Authority shall preside over the meetings of the Authority.

(3) The quorum for the meeting of the Authority shall be of two members.

Appointment
of officers
and other
staff of
National
Capital Civil
Service
Authority.

45G. (1) The Central Government, in consultation with the Authority, shall determine the nature and the categories of officers and other employees required to assist the Authority in the discharge of its functions and provide the Authority with such officers and employees, as it may deem fit.

(2) The officers and other employees of the Authority shall discharge their duties and functions under the general superintendence and control of the Authority.

(3) The salaries, allowances and conditions of service of the officers and other employees appointed under sub-section (1) shall be by rules made by the Central Government.

Powers and
functions of
National
Capital Civil
Service
Authority.

45H. (1) Notwithstanding anything contained in any law for the time being in force, the National Capital Civil Service Authority shall have the responsibility to recommend the transfers and postings of all the Group 'A' officers and officers of DANICS serving in the affairs of the Government of National Capital Territory of Delhi but not officers serving in connection with any subject matter, either fully or in part, connected with Entries 1, 2, and 18 of List II- State List of the Seventh Schedule to the Constitution, and Entries 64, 65 and 66 of List II- State List of the Seventh Schedule to the Constitution in so far as they relate to the entries 1, 2, and 18, or any other subject matter which is connected therewith or incidental thereto, to the Lieutenant Governor:

Provided that Authority may, if it deems appropriate, by way of a recommendation, delegate the responsibility to any other authority or department of the Government of National Capital Territory of Delhi.

(2) The National Capital Civil Service Authority shall have the responsibility to recommend for all matters connected with and falling under the subject of vigilance and non-vigilance matters for the purpose of disciplinary proceedings and prosecution sanctions against all the Group 'A' officers, including the officers of the All India Services and DANICS, serving in the affairs of the Government of National Capital Territory of Delhi but not officers serving in connection with any subject matter,

either fully or in part, connected with Entries 1, 2, and 18 of List II-State List of the Seventh Schedule to the Constitution, and Entries 64, 65 and 66 of List II-State List of the Seventh Schedule to the Constitution in so far as they relate to the entries 1, 2, and 18, or any other subject matter which is connected therewith or incidental thereto, to the Lieutenant Governor:

Provided that the Authority may, if it deems appropriate, by way of a recommendation, delegate the responsibility in respect to such officers serving in the affairs of the Government of National Capital Territory of Delhi to an officer of All India Services.

(3) The Lieutenant Governor, after the receipt of such recommendation under sub-section (1) or sub-section (2) of this section, may pass appropriate orders giving effect to the recommendation made:

Provided that the Lieutenant Governor, before passing appropriate orders on such recommendation, may ask for any relevant material regarding the Group 'A' officers, including the officers of the All India Services and DANICS, serving in the affairs of the Government of National Capital Territory of Delhi:

Provided further that in case the Lieutenant Governor differs with the recommendation made, whether based upon the material so called for or otherwise, the Lieutenant Governor may, for reasons to be recorded in writing, return the recommendation to the Authority for reconsideration by the Authority:

Provided also that in case of difference of opinion, the decision of the Lieutenant Governor shall be final.

(4) Without prejudice to generality of the provisions contained in sub-section (1), the National Capital Civil Service Authority shall—

(a) make recommendations for—

- (i) stability of tenure of posting of officers and other employees;
- (ii) rotational transfers and postings from sensitive to non-sensitive posts and *vice-versa*;
- (iii) determining suitability of officer for posting as Head of the Department;
- (iv) transfers and postings of all officers and other employees serving in the affairs of the Government of National Capital Territory of Delhi;

(b) make policy insofar as it relates to—

- (i) the capacity building of the officers and other employees serving in the affairs of the Government of National Capital Territory of Delhi;
- (ii) ensuring effectiveness in public services delivery in the Government of National Capital Territory of Delhi;
- (iii) ensuring good governance and e-governance in public administration in the Government of National Capital Territory of Delhi;
- (iv) ensuring greater transparency in the administration of the Government of National Capital Territory of Delhi;
- (v) ensuring the presence of a citizen centric administration in the Government of National Capital Territory of Delhi; and
- (vi) any other matter connected therewith or incidental thereto.

45-I. (1) The Authority shall furnish to the Central Government and the Government of the National Capital Territory of Delhi an annual report containing such details of the steps taken, proposals made and other measures undertaken by it in pursuance of its functions, in such form and manner as may be prescribed.

Annual report.

(2) The Central Government shall cause the annual report furnished under sub-section (1) to be laid, as soon as may be after it is received, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(3) The Government of National Capital Territory of Delhi shall cause the annual report furnished under sub-section (1) to be laid, as soon as may be after it is received, before the Legislative Assembly of National Capital Territory of Delhi within a total period of thirty days while it is in session, or in its forthcoming session.

Disposal of
matters by
Minister.

45J. (1) The Minister in-charge may, by means of standing orders, give such directions as deems thinks fit for the disposal of proposals or matters in his Department:

Provided that no such standing order shall be issued in contravention of the provisions of the Constitution or any other law for the time being in force including the provisions of this Act or Rules made thereunder or the statutory powers conferred under any law upon the officials, and financial powers delegated under the Delegation of the Financial Powers Rules, 1978.

(2) The Minister, in consultation with the Secretary concerned, may issue standing orders, concerning the matters or classes of matters which are to be brought to the personal notice of the Minister:

Provided that no such standing order shall be issued in contravention of the provisions of the Constitution or any other law for the time being in force including the provisions of this Act or Rules made thereunder or the statutory powers conferred under any law upon the officials, and financial powers delegated under the Delegation of the Financial Powers Rules, 1978.

(3) The copies of directions and standing orders shall be forwarded to the Lieutenant Governor and the Chief Minister.

(4) Notwithstanding anything contained in sub-sections (1) and (2), in addition to the proposals or matters required to be placed before the Lieutenant Governor under any law for the time being in force, the following proposals or matters shall be submitted to the Lieutenant Governor and the Chief Minister through the Chief Secretary for their opinion, before issuing any orders thereon, namely:—

(i) matters which affect or are likely to affect the peace and tranquility of the National Capital Territory of Delhi;

(ii) matters which affect or are likely to affect the interest of any particular community, the Scheduled Castes, the Scheduled Tribes and the socially and educationally backward classes or any other class of persons;

(iii) matters which affect the relations of the Government of National Capital Territory of Delhi with the Central Government, or any State Government, the Supreme Court of India or the High Court of Delhi and such other authorities as may be determined;

(iv) proposals or matters required to be referred to the Central Government under this Act;

(v) matters pertaining to the Secretariat of the Lieutenant Governor and personnel establishment and other matters relating to his office;

(vi) matters on which Lieutenant Governor is required to make an order under any law or instrument in force in his sole discretion;

(vii) matters specified under general or special order issued by the Lieutenant Governor under proviso to sub-section (2) of section 44;

(viii) petitions for mercy from persons under sentence for death and other important cases in which it is proposed to recommend any revision of a judicial sentence;

(ix) matters relating to summoning, prorogation and dissolution of the Legislative Assembly, removal of disqualification of voters at elections to the Legislative Assembly, Local Self Government Institutions and other matters connected therewith; and

(x) any other matter of administrative importance which the President of India or the Chief Minister may consider necessary.

45K. (1) The Secretary of the Department concerned shall be responsible for preparing and authenticating every memorandum including the Cabinet Notes, for consideration of the Council of Ministers and for obtaining approval of the Minister in-charge and the Chief Minister.

Duties of Secretaries.

(2) In case of proposals involving more than one Department, the views of all concerned Secretaries and the Ministers of all Departments consulted on the proposal shall be clearly and separately reflected in writing and signed by the Minister and the Secretary in the memorandum so as to ensure that in case of disagreement, the Council of Ministers shall take a decision.

(3) In case the Secretary to the Council of Ministers is of the opinion that the proposal considered and decided by the Council of Ministers is not in accordance with the provisions of the law for the time being in force or any rules of procedure made under section 44, it shall be the duty of the Secretary to the Council of Ministers to bring it to the notice of Lieutenant Governor for taking a decision thereon.

(4) Any matter which is likely to bring the Government of the National Capital Territory of Delhi into controversy with the Central Government or with any State Government, the Supreme Court of India or the High Court of Delhi and such other authorities as may be prescribed, the Secretary to the Department concerned shall, as soon as possible, bring it to the notice of the Lieutenant Governor, Chief Minister and the Chief Secretary in writing.

(5) The Chief Secretary and the Secretary to the Department concerned shall be responsible for compliance with the provisions of this Act and the rules framed under section 44, and when either of them considers that there has been any material departure from the same, instead of giving effect to such departure, he or they shall personally bring it to the notice of the Minister-in-charge, Chief Minister and the Lieutenant Governor immediately in writing.

45L. (1) The Central Government may, by notification published in the Official Gazette, make rules for carrying out the provisions of this Part.

Power to make rules.

(2) Every rule made by the Central Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or both Houses agree that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

45M. (1) If any difficulty arises in giving effect to the provisions of this Part, the President may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Part as may appear to him to be necessary or expedient for the purposes of removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.’

Sd/-
DROUPADI MURMU,
President.

Sd/-
DR. REETA VASISHTA,
Secretary to the Government of India.

By order and in the name of the Governor of Gujarat,

Sd/-
K. M. LALA,
Secretary to Government.

